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FISCAL IMPACT STATEMENT

LS 7875

BILL NUMBER: SB 444

NOTE PREPARED: Mar 21, 2005

BILL AMENDED: Mar 17, 2005

SUBJECT: Methamphetamine and Pharmacy Security.

FIRST AUTHOR: Sen. Young R Michael

FIRST SPONSOR: Rep. Friend

BILL STATUS: As Passed House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) The bill makes ephedrine and pseudoephedrine schedule V controlled substances. It allows a pharmacy to release a record concerning the purchase of a drug containing ephedrine or pseudoephedrine in accordance with state and federal health privacy laws.

The bill requires a law enforcement agency that terminates the operation of a methamphetamine laboratory to report the existence and location of the laboratory to the State Police, fire department, and county health department. It requires a law enforcement agency that discovers a child less than 14 years of age at a methamphetamine laboratory to notify the Division of Family and Children.

It also requires the Department of Environmental Management to maintain a list of persons certified to inspect or clean up property polluted by chemicals used to manufacture a controlled substance.

The bill allows a court to require a defendant demonstrating a pattern of repeated illegal use or manufacture of a controlled substance to participate in a drug treatment program as a condition of bail. It adds certain chemical reagents to the list of chemical reagents and precursors used in the manufacture of methamphetamine. It requires a package of a drug containing ephedrine or pseudoephedrine to be: (1) protected by an anti-theft device; and (2) stored in an area that is under constant video monitoring.

The bill allows a pharmacist to refuse to honor a prescription if honoring the prescription would endanger the safety of a person employed by the pharmacy. It requires a pharmacist to notify a physician who issued a prescription if the pharmacist refuses to honor the prescription because honoring the prescription would: (1) be against the best interest of the patient; or (2) be contrary to the health and safety of the patient. It allows the

board of pharmacy to refuse to renew, suspend, or revoke a pharmacy permit if the permittee fails to implement security measures designated by the board.

The bill makes intimidation a Class D felony instead of a Class A misdemeanor if the person to whom the threat is communicated is an employee of a pharmacy.

The bill also allows certain addiction treatment facilities to be located in a county that is contiguous to a county with an existing facility.

Effective Date: July 1, 2005.

Explanation of State Expenditures: (Revised) *Methamphetamine Lab Reporting:* The bill requires the State Police Department to develop either a reporting form, a specified electronic format, or both, by which law enforcement agencies can report the location of a methamphetamine lab. This provision should have a minimal fiscal impact on the Department, however, it may be dependent on the guidelines set by the Department for administering the reporting requirement.

Certified Inspector List: The bill requires the Department of Environmental Management to maintain a list of certified inspectors and allows the Department to adopt rules to implement the list. The fiscal impact of this provision is dependent on the extent of the list and the resources required for establishing and maintaining such a list.

Board of Pharmacy: The bill allows the state Board of Pharmacy to adopt rules regarding pharmacies releasing records of ephedrine or pseudoephedrine purchases to law enforcement agencies. If the Board requires an additional meeting to adopt such rules, the cost of one meeting is approximately \$620, including per diem and mileage based on \$0.34 per mile as of February 2005.

Addiction Treatment Facilities: Currently, the Division of Mental Health and Addiction (DMHA) may not grant approval to become a new provider of Methadone, Levo-alpha-acetylmethadol, Levo-alpha-acetylmethadol, Levomethadyl acetate, LAAM, or Buprenorphine; unless (1) the drugs will be provided in a county with a population of more than 40,000, (2) there are no other providers located in the county or in a county contiguous to the county where the provider will provide the drugs, and (3) the provider supplies a needs assessment and any other information required to DMHA.

This bill would allow DMHA to grant approval to a new provider of one of the aforementioned drugs in a contiguous county, to a county with a methadone clinic, if they meet the previously mentioned requirements and there are no other providers of the drugs in the county in which the provider is seeking approval.

The state currently approves 13 methadone clinics, none of which are state- or county-funded. There are 16 counties which have a population over 40,000 and are contiguous to a county which currently has a methadone clinic. The number of these counties which would have a provider apply to operate a methadone clinic are unknown. DMHA is responsible for conducting an annual site visit to all methadone clinics. Site visits are funded through an annual \$20 out-of-state resident fee collected for methadone services. In SFY 2002, the state collected \$71,154 in fees. Of this, DMHA spent \$22,957 for annual site visits to 12 clinics in SFY 2003. The cost per site visit is unknown and varies depending on clinic size. It is assumed that DMHA should be able to incorporate the cost of any new site visits within the current revenue it receives from out-of-state resident fees.

Penalty Provision: The bill makes it a Class D felony to intimidate an employee of a pharmacy, and a Class C felony if the person who intimidates also draws or uses a deadly weapon.

In regards to committing a Class D felony, this bill expands the list of chemical reagents or precursors that one may be found in possession of with the intent to manufacture certain controlled substances. The bill includes certain forms of ephedrine or pseudoephedrine as Schedule V controlled substances. Currently, it is a Class D felony to possess, deliver, or manufacture a Schedule V controlled substance in violation of state and federal law. The bill also reduces the list of ephedrine-related substances that one may be found in possession of more than 10 grams. The former provision could potentially increase Class D felony convictions, while the latter could potentially decrease such convictions.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. A Class C felony is punishable by a prison term ranging from two to eight years depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$21,514 in FY 2004, ranging from a low of \$16,645 to a high of \$49,281. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

The estimated average cost of housing a juvenile in a state juvenile facility was \$59,574, with the costs ranging from a low of \$52,420 to a high of \$77,674. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months, or two years for a Class C felony.

Explanation of State Revenues: *Immunity Provision:* The bill makes pharmacists immune from criminal prosecution and civil liability for refusing to honor a prescription for certain reasons. If fewer civil actions occur as a result of the immunity provision, revenue to the state General Fund from court fees would be less than what would have otherwise occurred. However, any changes in revenue are likely to be small.

Court Fee Revenue: A person who has an interest in property that is believed to be contaminated by a methamphetamine lab and has been quarantined by a law enforcement agency may file a petition with the appropriate circuit or superior court. The court would then be required to hold a hearing to determine if the quarantine should be removed. If additional civil actions occur, revenue to the state General Fund may increase if court fees are collected. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Penalty Provision: The bill makes it a Class B infraction for improperly selling a drug containing ephedrine and/or pseudoephedrine and makes it a Class A misdemeanor if the offender has a prior unrelated judgement or conviction or commits the crime knowingly or intentionally.

If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is \$5,000. The maximum judgment for a Class B infraction is \$1,000, which is deposited in the state General Fund. However, any additional revenue would likely be small.

The maximum fine for a Class D felony and a Class C felony is \$10,000. If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state

General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Explanation of Local Expenditures: (Revised) *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund.

Penalty Provision: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44. A Class A misdemeanor is punishable by up to one year in jail.

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Penalty Provision: If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of Correction, State Police Department, Department of Environmental Management, Health Professions Bureau, Board of Pharmacy, Family and Social Services Administration.

Local Agencies Affected: Trial courts, city and town courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; Department of Correction; John Viernes, DMHA, 232-7913.

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